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AMENDED IN SENATE AUGUST 31, 2007

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CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 515

Introduced by Assembly Member Lieber

February 20, 2007

An act to add Section 144.6.5 to the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 515, as amended, Lieber. Occupational safety and health.

Existing law provides that the Occupational Safety and Health Standards Board is the only agency in the state authorized to adopt, amend, or repeal occupational safety and health standards, and requires the board to adopt standards that are at least as effective as federal standards promulgated under the Occupational Safety and Health Act of 1970, within a specified time.

This bill would declare the intent of the Legislature that the board set as its highest priority protection against the effects of those substances that may cause cancer or reproductive or developmental toxicity. This bill would also require the board to adopt standards establishing permissible exposure limits (PEL) for toxic materials in the workplace

that meet specified criteria. This bill would further require that any PEL adopted by the board for a given substance, to the extent feasible, correspond to the health-based occupational exposure level determined for that substance by the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency. In addition, this bill would require OEHHA to submit to the board and to the Division of Occupational Safety and Health a list of toxic materials that meet the criteria established by this bill, with a recommended health-based occupational exposure limit (OEL), not later than February 1, 2008. The bill also would specify the composition of any advisory committee established by the division as well as findings required to be made by the division and the board relating to the adoption of PELs. The bill would also require the Occupational Safety and Health Standards Board to submit, no later than April 1, 2008, to the Governor and the Legislature a schedule for the adoption of standards and PELs.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Hazardous substances in the workplace can cause preventable
- 4 and life threatening reproductive and developmental damage and
- 5 cancer to workers who are exposed to those substances.
- 6 (b) Workers have a right to be adequately protected from
- 7 hazardous substances that cause cancer and reproductive or
- 8 developmental toxicity, especially since work-related cancer may
- 9 not become manifest until many years after the worker leaves the
- 10 workplace, and some exposures can permanently impact workers'
- 11 ability to produce and raise healthy children.
- 12 (c) In order to best protect workers, it is the intent of the
- 13 Legislature that the Occupational Safety and Health Standards
- 14 Board set as its highest priority, in the process of regulating toxic
- 15 materials, protection against the effects of those substances that
- 16 may cause cancer or reproductive or developmental toxicity. The
- 17 Legislature also recognizes the need to balance this priority with
- 18 the regulation of toxic materials that may be life-threatening or
- 19 cause serious disabling acute health effects. Among all these toxic

1 hazardous substances, the board shall also give greater priority to
2 substances that are in widespread use in California and those that
3 potentially pose the greatest exposure risk to workers.

4 SEC. 2. Section 144.6.5 is added to the Labor Code, to read:

5 144.6.5. (a) For the purposes of this section, the following
6 definitions apply:

7 (1) “Health-based occupational exposure limit” and
8 “health-based OEL” mean the level of an airborne contaminant,
9 based on a quantitative risk assessment prepared or published by
10 OEHHA, that is not anticipated to cause or contribute to
11 reproductive or developmental damage or that does not pose a
12 significant cancer risk to any employee who has regular exposure
13 to the contaminant for the period of his or her working life.

14 (2) “OEHHA” means the Office of Environmental Health
15 Hazard Assessment in the California Environmental Protection
16 Agency.

17 (3) “Permissible exposure limit” and “PEL” have the same
18 meaning as defined in Section 5155 of Title 8 of the California
19 Code of Regulations.

20 (b) The board shall adopt occupational health and safety
21 standards, and shall place among its highest priorities the adoption
22 of occupational health and safety standards, including a permissible
23 exposure limit, for any toxic material that meets all the following
24 criteria:

25 (1) The material is likely to be used in workplaces under the
26 division’s jurisdiction and is not used primarily as a chemical
27 intermediate, in a closed system, as a pesticide, or as a drug.

28 (2) The material is a substance known to the state to cause cancer
29 or reproductive or developmental toxicity within the meaning of
30 the Safe Drinking Water and Toxic Enforcement Act of 1986
31 (Chapter 6.6 (commencing with Section 25249.5) of Division 20
32 of the Health and Safety Code).

33 (3) A final quantitative risk assessment for the material has been
34 published by OEHHA.

35 (c) (1) Each PEL adopted by the board shall be set at a level
36 that, to the extent feasible, corresponds with the health-based OEL
37 recommended by OEHHA pursuant to subdivision (e). In setting
38 the level of the PEL, the board shall place primary emphasis on
39 attainment of the highest degree of health and safety protection
40 for the employee and, to the extent technically and economically

feasible, shall avoid any significant risk to employee health. ~~There is a rebuttable presumption that any PEL adopted pursuant to this subdivision shall be the same as the corresponding health-based OEL.~~

(2) For the purposes of determining the technical and economic feasibility of compliance with the proposed PEL, the board shall consider the cost of compliance to the industry as a whole, using best available technology and engineering controls or changes in operational practices. *Where the proposed PEL would require a change in an existing biologic license or an application for a biologic license, the board shall consider evidence presented to it of the costs for the industry to comply with United States Food and Drug Administration requirements.*

(d) Not later than February 1, 2008, OEHHA shall submit to the division and the board a list of those toxic materials that meet the criteria of subdivision (b).

(e) (1) For any toxic material identified pursuant to subdivision (d), OEHHA shall recommend to the board a health-based OEL.

(2) For the purposes of a toxic material that is a carcinogen, a level that does not pose any significant risk to employee health shall not be less stringent than the level that would result in one excess cancer per 100,000 employees exposed to the carcinogen over a working lifetime.

(3) Calculations and recommendations made pursuant to this subdivision are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) (1) The Legislature finds and declares that the Division of Occupational Safety and Health has adopted a policy and procedure to, at its discretion, establish one or more advisory committees of technical experts, interested parties, and the public to assist the division and the board in adopting and revising PELs for airborne contaminants.

(2) If the division, pursuant to its existing authority, convenes an advisory committee, it shall be composed of individuals with expertise in relevant technical areas including toxicology, epidemiology, occupational medicine, industrial hygiene, ventilation engineering, industrial hygiene chemistry, and engineering economics. A committee member shall not participate in any discussion or decision in which he or she has a financial

1 interest. All committee members shall be required to sign
2 conflict-of-interest declarations.

3 (3) If an advisory committee recommends a PEL that is less
4 protective than the corresponding health-based OEL, it shall state
5 in writing the reasons for its recommendation.

6 (4) In addition to submitting recommendations to the board
7 pursuant to this subdivision, the division shall submit the following
8 to the board:

9 (A) The findings of an advisory committee, if any, and the
10 material reviewed by the committee.

11 (B) The division's findings and the material reviewed by the
12 division in developing its recommendations to the board, regardless
13 of whether a consensus-based decision-making model was used
14 by the advisory committee.

15 (g) If the board, based on feasibility, adopts a PEL pursuant to
16 subdivision (c) that is less protective than the health-based OEL,
17 the board shall do both of the following:

18 (1) Make findings of fact regarding feasibility, including whether
19 a more protective PEL may be reasonably achieved with the use
20 of best available technology and engineering controls or changes
21 in operational practices, and shall cite the evidence for the findings.
22 The board shall give more weight to evidence regarding the most
23 protective exposure level able to be measured by existing
24 instruments or able to be achieved using best available technology
25 or engineering controls which is based on independently verified
26 exposure monitoring data than to evidence that does not include
27 such data.

28 (2) Identify the degree of reproductive or developmental harm
29 or excess cancer risk for the PEL compared to the health-based
30 OEL.

31 (h) Not later than April 1, 2008, the Occupational Safety and
32 Health Standards Board shall submit to the Governor and the
33 Legislature a schedule for the adoption of standards and PELs as
34 required by this section.